HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.323 of 2007

Between:

Darga Hazrat Sondey Shaheed (RH),
Moti Masjid and Grave Yard Managing
Committee, At Motinagar, Khammam
Rep., by its President Syed Ahmad Shareef

... Appellant

And

A.P. State Wakf Board,
Rep., by its Chief Executive Officer,
Ha House, Opp: Public Gardens,
Nampally, Hyderabad and three others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri Kowturu Vinaya Kumar

Counsel for respondent Nos.1 and 2 : Shri S.M. Subhani

Counsel for respondent No. 3 : Shri M.T. Ghori

April 19, 2007

Per G.S. Singhvi, C.J.

This is an appeal for setting aside the order passed by the learned Single Judge in Writ Petition No. 25186 of 2006, whereby he refused to nullify order dated 21-11-2006 passed by Andhra Pradesh State Wakf Board (for short, 'the Board') on the ground that an effective statutory alternative remedy is available to the writ petitioner (the appellant herein).

The appellant claims to be the President of the Managing Committee of Darga Hazrat Sondey Shaheed (RH) Moti Masjid and

Grave Yard, Moti Nagar, Khammam. The committee is said to have been constituted by the Andhra Pradesh Wakf Board (for short, 'the Board') under Section 18 of the Wakf Act, 1995 (for short, 'the Act') for a period of two years commencing from 20-10-2005. By the order impugned in the writ petition, the Board accepted the petition filed by respondent Nos.3 and 4 and appointed them as joint Mutawallis of Darga Hazrat Sondey Shaheed under Section 42 of the Act. That order reads as under:

> "Sri Mohd. Sarvar Miya and Mohd. Maqbul S/o.MOhd. Khalender submitted a petition in the reference 1st read above with a request to grant towliath in their name in respect of Dargah Hzt. Sonde Shaheed RA situated in Khammam Dist. And town with Graveyard, Mosque with its attached service inam lands bearing Sy.Nos.86, 87, 88 and 89 situated at Khammam village as Joint Mutawallis to render service to Dargah as their father was shikmidar with equal share in the institution along with Mohd. Qasim S/o.Budan Saheb. They further stated that Mohd. Qasim and Mohd. Khalender expired on 25-10-1969 and
> 17-06-1999. Mohd. Qasim said to have left only one son by name Mohd. Tajuddin and the petitioners are only the sons of Mohd. Khalender the 2nd half share holder. The son of Mohd. Qasim has got no objection for granting towliath in the names of the petitioners as per consent letter submitted by him. In the last they have requested to grant Joint Mutawallies in the names of the petitioners for rendering services to subject institution and to protect the wakf property.
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> The request of the petitioner has been examined keeping in view of the documents produced by them by the Special Officer and found that both the petitioners namely Mohd. Sarvar Miya and Mohd. Maqbul are found eligible to appoint them as Joint Mutawallies of subject institution for rendering services of Dargah as well as to protect the wakf property attached to the institution.
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> In view of the above facts and documents, Sri Mohd. Sarvar Miya and Mohd. Maqbul S/o.Mohd. Khalender Saheb are hereby appointed as Joint Mutawallies of subject institution under Sec.42 of the Wakf Act with immediate effect. They should render services properly to the institution and the Annual accounts should be submitted to the Wakf Board on the

prescribed proforma every year by paying Wakf fund as required under the provisions of Wakf Act, 1995. They should take immediate steps for eviction of encroachers and to get Wakf property restored to the institution by initiating action under the provisions of Wakf Act, 1995. The appointed Joint Mutawallies should take charge of the institution immediately and report compliance.

Since the managing committee approved by the Wakf Board is managing the affairs of DArgah, soonafter appointment of hereditary Mutawallies under the provisions of Wakf Act, 1995 the committee will automatically ceases to function as managing Committee as per the judgment of Hon'ble High Court in the case of Dargah Hzt. Barhana Shah Saheb situated in Hyderabad city.

The Board reserves its right to cancel/alter/modify its order at any time without assigning any reasons thereof."

The appellant questioned the legality of the above reproduced order on several grounds including the one that he had not been given opportunity of hearing. He also pleaded that the decision of the Managing Committee of the Darga could not have been changed by the Board by exercising power under Section 42 of the Act and, in any case, respondent Nos.3 and 4 could not have been appointed as Joint Mutawallies.

The learned Single Judge dismissed the writ petition by observing that an effective alternative remedy is available to the appellant under Section 83 (2) of the Act.

Shri K. Vinaya Kumar, learned counsel for the appellant fairly admitted that the order impugned in the writ petition is appealable under Section 83 (2) of the Act, but argued that the learned Single Judge committed an error by refusing to entertain the appellant's challenge based on the ground of violation of the rules of natural justice.

We have considered the submission of the learned counsel, but have not felt impressed. A reading of the plain language of Section 42 of the Act shows that the same does not provide for giving notice or

opportunity of hearing to the Managing Committee of the wakf. Therefore, we are not inclined to agree with Shri K. Vinay Kumar.

In **M. Bikshapathi v. Government of Andhra Pradesh**[1] and **Allaudin Charities Zakath Wakf v. Hameed Ali**[2], this Court has held that the alternative remedy available under Section 83(2) of the Act is an effective alternative remedy. Therefore, we see no reason to interfere with the order under challenge.

For the reason aforestated, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, WAMP No. 624 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

April 19, 2007
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[1] 1996 (6) ALD 270

[2] 2002 (1) ALD 67